

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 4/2015**

PRECAUTIONARY MEASURE No. 535/14

Matter of persons in immigration detention at Carmichael Road Detention Center
Commonwealth of the Bahamas

February 13, 2015

I. INTRODUCTION

1. On December 30, 2014, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "IACHR") received a request for precautionary measures submitted by the Caribbean Institute for Human Rights, the International Human Rights Clinic of the Inter-American University of Puerto Rico and the Robert F. Kennedy Center for Justice and Human Rights (hereinafter "the applicants"), requesting that the Commission require the Commonwealth of The Bahamas (hereinafter "The Bahamas" or "the State") to adopt measures to protect the life and physical integrity of the persons in immigration detention at Carmichael Road Detention Center, (hereinafter "the detainees" or "the proposed beneficiaries"). According to the request, the proposed beneficiaries are at risk due to, inter alia, the alleged inhumane conditions of detention, extreme overcrowding and the lack of appropriate medical attention that could affect their right to life and physical integrity.

2. After analyzing the factual and legal arguments presented by the applicants, the Commission considers that the information presented demonstrates *prima facie* that the persons in immigration detention at Carmichael Road Detention Center appear to be in a serious and urgent situation, that places their lives and physical integrity at risk. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission requests that The Bahamas: a) adopt the necessary measures to ensure the life and physical integrity of the persons in immigration detention at Carmichael Road Detention Center; b) provide hygienic conditions and adequate medical treatment to the persons in the facility, according to their respective medical conditions; c) adopt the necessary measures to address the special situation of the unaccompanied children, according to international standards; d) Implement measures to ensure that legal assistance is available to all of the beneficiaries, including relevant information concerning their detention and applicable legal process; e) take immediate action to substantially reduce overcrowding within Carmichael Road Detention Center; f) investigate the facts that gave rise to the adoption of these precautionary measures in order to avoid their repetition; and g) ensure that civil society organizations and relevant international organizations have access to the Carmichael Road Detention Center for the purpose of monitoring detention conditions.

II. SUMMARY OF FACTS AND ARGUMENTS SUBMITTED BY THE APPLICANTS

3. According to the request for precautionary measures, on November 1st, 2014, new immigration policies came into effect in The Bahamas, concerning work permits and authorizations to stay in the country. Previously, the Government reportedly used to issue certificates of identity to those born of foreign parents in The Bahamas, regardless of their parents' legal status. However, the new regulation supposedly requires that all persons not recognized as citizens or residents, including those who have already obtained a certificate of identity, present a valid passport from their parents' country-of-origin and proof of an authorization to stay in The Bahamas. Additionally, the applicants indicate that the Government is requiring such persons to apply for a new document of authorization to stay in the country, called a 'Belonger's Permit.' The applicants also stated that since the implementation of this policy the Government has begun raiding communities and collectively detaining people suspected of having irregular residency status. They claim that, Haitian migrants or Bahamians of Haitian descent are

often targeted, including those who were born in The Bahamas and who applied for citizenship, but were still waiting for a response at the time of their apprehension.

4. In the request for precautionary measures, the applicants indicated that on November 12, 2014 they visited the Carmichael Road Detention Center in The Bahamas and were able to obtain information regarding the conditions of the persons detained in the center, based on their interviews with seven female and eight male detainees. In this regard, applicants state that:

- a) There are an '[...] unconfirmed number of women [...], some of them with children and/or pregnant [...]' and that at least seven small children are held at the detention facility, between the ages of six months and seven years old.' As for the male detainees who were interviewed, ages ranged from 18 to 28 years old.
- b) The detention center supposedly lacks sufficient mattresses, bed sheets or blankets, adequate food, feminine hygiene products and basic necessities such as toilet paper, soap, tooth brushes, tooth paste and diapers for infants.
- c) Many of the proposed beneficiaries have to sleep on the floor.
- d) All detainees receive the same food (an oatmeal ration in the morning, a slice of bread for lunch and plain pasta for dinner), regardless of their age.
- e) In the male section, there allegedly is only one shower and one functioning toilet, with a sewage-drainage problem and wastewater flooding.
- f) Visits with relatives are reduced to 10 to 30 minutes with no direct physical contact allowed, with limited access to legal services and no professional translation services.
- g) Concerning specific situations, the applicants reported that one of the seven female detainees apparently gave birth without medical assistance and was only taken to the hospital two hours later, and that a seven-year old boy who suffered from asthma supposedly had not received any medication at the time of the interview.

5. In relation to the set of proposed beneficiaries, the applicants indicated that "[d]ue to the nature of detention conditions [...], providing written consent from all potential beneficiaries is currently a material impossibility"; and that during their visit at the detention center some detainees made verbal requestes to the applicants for the protection of their rights. Therefore, the applicants have requested the adoption of precautionary measures to: a) provide access to health services and treatment, including appropriate food for children, personal hygiene products, pre-natal and post-natal medical attention, asthma medication for the abovementioned child and to conduct screenings of all current and new detainees to assess their medical needs; b) to address all sanitary issues, especially the sewage problem; c) address the situation of overcrowding; and d) implement safeguards in all immigration proceedings, including access to legal counsel, information and due process guarantees.

6. In view of the information provided, on January 15, 2015, the IACHR decided to request specific information from the State of The Bahamas, specifically regarding the alleged detention conditions of the persons currently held at the Carmichael Road Detention Center. On the same date, additional information was requested from the applicants, specifically concerning the alleged situation of risk of the proposed beneficiaries.

7. On January 25, 2015, the applicants responded to the request for information, indicating that:

- a) The primary focus of the request for precautionary measures "results from the conditions of detention at Carmichael Road Detention Center, the ill-treatment of detainees at this facility, and the

lack of due process safeguards surrounding their detention that all result in a serious risk to their physical, emotional, and mental integrity.”

b) The new immigration policy enacted by the government of The Bahamas “continues to exacerbate [...] the conditions leading to serious risk of irreparable harm. The influx of people rounded up under the new policy has only served to worsen the conditions at Carmichael Road Detention Center. No provisions have been made to accommodate the greater number of people being held in immigration detention.”

c) There are two key issues that not only prevent the fulfillment of the Commission’s request, but also reinforce the urgent need for the issuance of precautionary measures. First, the applicants “and other third parties have been unable to determine an exact and up-to-date accounting of all persons currently detained in Carmichael Road Detention Center because access to the facility is so limited.” Second, the applicants also indicate that “the very nature of immigration detention makes it more difficult to name specific individuals because there is, on average, more turnover in the detainee population than in the population at a criminal detention facility.”

d) Access to Carmichael Road Detention Center is extremely limited. The obstacles imposed by The Bahamas effectively amount to incommunicado detention for the majority of the detainees at the facility. Detainees have no knowledge of their basic rights, nor have they been provided access to legal counsel.

e) Carmichael Road Detention Center is staffed by armed members of the Royal Bahamas Defense Force, and this allegedly “prevents transparency and civilian oversight, and directly contravenes Principle XX of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.”

f) No special considerations are being given for detained women and children. Furthermore, children are detained at Carmichael Road Detention Center alongside adults.

g) Regarding the detention conditions that presumably constitute inhuman and degrading treatment and that pose a serious risk to the detainees’ physical, emotional and mental integrity, the applicants allege:

- I. Detainees have reported that they are given insufficient food with poor nutritional value. The food that is received is not adequate for detainees with specific dietary needs nor is it age appropriate for small children and infants.
- II. The proposed beneficiaries are deprived of their access to clean drinking water by the authorities in Carmichael Road Detention Center. Detainees are forced to retrieve water from the bathroom shower that is shared with all detainees, and are forced to store this water in used, unsanitary containers for their daily needs.
- III. Detainees are not provided with clean clothes, and are thereby “forced to wear only what they had on when they were detained. Authorities do not provide cleaning services, cleaning supplies, or the opportunity for detainees to wash their clothes themselves.”
- IV. Applicants have received multiple reports from detainees that constitute a consistent pattern of alleged denial of adequate medical care. In this sense, the applicants indicate that “[t]here is no in-house medical staff at Carmichael Road Detention Center and

routine medical care is not available. Those who appear to have the most urgent medical needs must wait for the only doctor, who visits the detention center once a week.”

- V. Given that the State allegedly continues to deny regular and transparent access to detainees at Carmichael Road Detention Center, applicants are unable to determine the number of other detainees likewise being denied access to critical medical care.
- VI. The proposed beneficiaries have reported that the dormitory buildings are “infested with mosquitoes, cockroaches, mice, and rats [...] [a]lthough the detainees try to keep their areas clean, they cannot because there are no cleaning products or appliances at their disposal.”

h) In relation to the alleged physical abuse and other ill-treatment, the applicants indicate that:

- I. Detainees have repeatedly reported physical abuse and ill-treatment by Detention Officers during immigration round-ups and by authorities once detained at Carmichael Road Detention Center. On this matter, the applicants state that “[o]ne detainee reported that he was beaten by immigration officers who forced him to fall from a balcony onto the concrete during one such round-up.”
- II. The proposed beneficiaries have complained of excessive use of force, including physical and verbal abuse, and intimidation by guards belonging to the Bahamian military, brandishing semi-automatic weapons.

i) Related to other conditions presumably “posing serious risk to the beneficiaries” emotional and mental integrity, the applicants express that:

- I. Detainees are not allowed to make phone calls.
- II. Visitation is limited to Wednesdays and Fridays from 1:00 to 3:00 p.m. However, visitation hours can be altered or suspended without notice. The visit is conducted outside; both detainee and visitor discuss their affairs while standing 10 feet from each other, separated by two double fences. During visitation hours detainees are accompanied by Detention Officers wearing military fatigues and holding batons.
- III. There is no pre-established maximum period for the detention of migrants in the Bahamas and there are no administrative or judicial remedies available to question the continuity of the detention. On this matter, the applicants indicate that “[they] know of at least one Cuban detainee who has remained in detention for more than 20 months.”

j) In relation to the alleged “lack of due process safeguards to address serious risks posed to beneficiaries’ physical, emotional, and mental integrity,” the applicants state that:

- I. There are no formal and independent complaint mechanisms available through which genuine complaints of illegality and wrongdoing can be received, analyzed, investigated and prosecuted.
- II. None of the proposed beneficiaries with whom the applicants had been able to speak “have been afforded the opportunity to consult with domestic legal counsel about their case. In fact, to the Petitioners’ knowledge, none of the proposed beneficiaries have been granted access to counsel.”

k) Regarding information “pertaining to the grave and urgent risk faced by the proposed beneficiaries upon expulsion and existing access to international protection regimes,” the applicants express that:

- I. Given that detainees held at Carmichael Road Detention Center are not interviewed or screened to determine their citizenship status “but rather rounded up and detained based on presumptions as to their status because of place of residence (predominantly Haitian neighborhoods), last names (Haitian-sounding), and physical characteristics (Haitian-looking), the Petitioners are gravely concerned that persons eligible to apply for Bahamian citizenship will be summarily deported.”
- II. The government of The Bahamas is treating all those detained at Carmichael Road Detention Center as “illegal immigrants,” despite the fact that some have pending applications for Bahamian citizenship.
- III. State authorities do not apply a consistent protocol or screening system for all detainees at Carmichael Road Detention Center. In particular, the applicants allege that “Haitians are not given information or a meaningful opportunity to apply for refugee status or asylum. To the Petitioners’ knowledge, no formal policy exists to provide immigration detainees access to international protection regimes.”

l) The applicants state that, “In light of evidence provided by Petitioners – including evidence of general conditions of detention that amount to cruel, inhuman, and degrading treatment, physical abuse and ill-treatment of specific detainees, the lack of additional exacerbating factors and patterns of State behavior increasing the likelihood of risk, and the absence of due process and other safeguards to prevent irreparable harm – this Honorable Commission should find a presumption of risk of irreparable harm to all proposed beneficiaries unless and until the State grants direct and private access to all detainees held at Carmichael Road Detention Center.”

8. On February 3, 2015, the applicants reiterated to the IACHR the need to adopt precautionary measures, in view of the current conditions of the persons in immigration detention at Carmichael Road Detention Center and taking into account the lack of response of The Bahamas. In this regard, the applicants expressed that, “Since our initial request for precautionary measures, we have received reports indicating that several of the detainees have been deported while others are still subjected to detention in Carmichael Road Detention Center under horrid conditions that amount to cruel, inhuman and degrading treatment.”

9. To date, the State has not answered the request for information by the Inter-American Commission sent on January 15, 2015.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

10. The mechanism of precautionary measures is a part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, and Article 18 of the Commission’s Statute. The mechanism of precautionary measures is set out in Article 25 of the Commission’s Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

11. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

- a) 'serious situation' refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b) 'urgent situation' refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c) 'irreparable harm' refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

12. In the present matter, the Commission observes that the State has not replied to the request for information made by the IACHR on January 15, 2015, which was intended to obtain the State's observations regarding the request for precautionary measures, and the measures of protection which might have been implemented based on the situation alleged by the petitioners. In this regard, even though the lack of response from a State is not enough to grant precautionary measures, it constitutes an element to be taken into consideration when making a decision. In this sense, the lack of information from the State makes it impossible for the Commission to know of any measures implemented, and in general, the State's position on the allegations made.

13. In the current situation, the Commission considers that the requirement of seriousness is met, in view of the situation faced by the persons in immigration detention at Carmichael Road Detention Center due to, inter alia, the alleged inadequate infrastructure of the facility, the deficient medical attention received, the unsanitary conditions within the detention center, as well as allegations of physical and psychological abuse. Specifically, according to the information provided by the applicants, the seriousness of the situation is exacerbated by the extreme overcrowding at the facility. In this scenario, the IACHR notes that the applicants have stated that detainees are given insufficient food with poor nutritional value, are deprived of access to clean drinking water, are not provided with clean clothes, are consistently denied adequate medical care and are held in dormitory buildings that are infested with mosquitoes, cockroaches, mice and rats. In addition, the Commission takes note of the alleged lack of measures to respond to the special situation of unaccompanied children.

14. In the context of the analysis of this requirement, the Commission takes into account that in 2012 UNCHR indicated that the "[d]etention conditions at Carmichael are substandard and human rights organizations have extensively documented serious concerns relating to the inhumane treatment and

physical and psychological abuse of detainees.”¹ The IACHR also notes that in 2012 the UNCHR recommended that the Government of The Bahamas should “not only contemplate improving detention conditions but, more importantly, also consider alternatives to detention, especially for asylum-seekers, refugees, stateless persons and other vulnerable individuals.”² Likewise, the Commission takes into account the report presented by UN Special Rapporteur on Trafficking of Persons, especially women and children, Ms. Joy Ngozi Ezeilo, which states that “[...]irregular migrants have been detained in the Carmichael Road Detention Centre, the only dedicated immigration detention centre in the country, which is located in Nassau. At the time of the Special Rapporteur’s visit the centre housed 133 detainees comprising 12 to 15 different nationalities, including several detainees from India, the Dominican Republic, Cuba, Haiti and Colombia, one from Kenya, one from Eritrea and one from Ghana, among others. The Special Rapporteur expressed concern with regard to the poor conditions and the length of detention, which do not meet international standards. The centre was obviously overcrowded, as the main section for men had a capacity of only 70 beds and one room for sanitary facilities.”³ In this regard, the IACHR observes that the information provided by the applicants is consistent with the information received in the context of precautionary measures MC 141-14 (BS), also concerning persons deprived of liberty at Carmichael Road Detention Center in The Bahamas.⁴

15. Taking into consideration the information provided, evaluated as a whole, and in light of the *prima facie* evaluation criteria of the precautionary measures mechanism, the Commission considers that the rights to life and physical integrity of the persons in immigration detention at Carmichael Road Detention Center are at risk.

16. Regarding the requirement of urgency, the Commission believes that it is met; taking into account the allegations made and that it has not received information from the State regarding possible measures implemented to improve the alleged conditions of the persons in immigration detention at Carmichael Road Detention Center. Particularly, the IACHR has not received information that indicates that State authorities are taking the necessary measures to protect the life and physical integrity of the detainees at the immigration detention center, despite the serious situations described by the applicants and the recommendations issued by UNCHR. Furthermore, applicants have indicated that the conditions at the center have persisted overtime; inflicting direct harm to the life and personal integrity of the persons held at the center. They maintain that, that regardless of complaints filed at the domestic level, The Bahamas has limited the possibility of visiting the center by the applicants or other organizations.

¹ UNHRC, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report – Universal Periodic Review: Commonwealth of The Bahamas, June 2012, Pag.4. Available at <http://www.refworld.org/pdfid/4ffd33042.pdf>

² UNHRC, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report – Universal Periodic Review: Commonwealth of The Bahamas, June 2012, Pag.4. Available at <http://www.refworld.org/pdfid/4ffd33042.pdf>

³ Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo. Human Rights Council, Twenty-sixth session, A/HRC/26/37/Add.5, 5 June 2014, paragraph 22. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/042/57/PDF/G1404257.pdf?OpenElement>

⁴ See. IACHR. “2013 Annual Report of the IACHR.” April 23, 2014. Available at: <http://www.oas.org/en/iachr/docs/annual/2013/TOC.asp>

17. Regarding the requirement of irreparable harm, the Commission considers that it is fulfilled, to the extent that the possible effect on the right to life and physical integrity represents the most severe irreparable situation.

18. As both the Inter-American Court and the IACHR have consistently pointed out, Article 1.1 of the Convention establishes the general obligation of States Parties to respect the rights and freedoms recognized therein and ensure the free and full exercise of those rights to all persons subject to their jurisdiction. On this matter, the Inter-American Principles on Detention offer specific guidelines on basic provisions –such as the rights to food, drinking water, sleeping quarters, hygiene, clothing and educational activities, recreation, religious freedom and visits- so as to ensure that all persons held in the custody of a state receive humane treatment.⁵ Furthermore, the IACHR reiterates that regarding migrants “international standards establish that detention must be applied only as an exceptional measure and after having analyzed the necessity in each case. In all cases, states must avoid prolongation of detention, and must ensure that it is as brief as possible.”⁶

19. Regarding migrant children, the IACHR and the Inter-American Court have stressed that States may not resort to the deprivation of liberty of children as a precautionary measure to protect the objectives of immigration proceedings; nor may States base this measure on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity. In addition, the IACHR and the Court have established that the places for accommodating children should respect the principle of separation and the right to family unity, so that, in the case of unaccompanied or separated children, they should be lodged in places other than those that correspond to adults and, in the case of accompanied children, they should be lodged with their family members in non-detention centers, unless separating them is more appropriate pursuant to the principle of the best interest of the child. According to the International Human Rights Standards, the protection and comprehensive development of the child should be given special consideration and have priority over any consideration of nationality or migratory status, in order to ensure the full exercise of their rights – in this regard the lack of adequate food and access to healthcare, poor sanitary conditions, overcrowding and inadequate infrastructure represent a serious threat to children’s rights.

IV. BENEFICIARIES

20. The request was submitted on behalf of the persons in immigration detention at Carmichael Road Detention Center, who can be identified under the terms of Article 25.6.b of the IACHR Rules of Procedure.

V. DECISION

21. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Commonwealth of The Bahamas to:

⁵ IACHR, Report on Immigration in the United States: Detention and Due Process, December 30, 2010, Paragraph 67. Available at: <http://www.oas.org/en/iachr/migrants/docs/pdf/migrants2011.pdf>. Also see, See IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, supra, Principles XI-XIII, X, XVIII.

⁶ IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, December 30, 2013, paragraph 428. Available at <http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf>

- a) Adopt the necessary measures to ensure the life and physical integrity of the persons in immigration detention at Carmichael Road Detention Center.
- b) Provide hygienic conditions and adequate medical treatment to the persons in the facility, according to their respective medical conditions.
- c) Adopt the necessary measures to address the special situation of unaccompanied children, according to international standards.
- d) Implement measures to ensure that legal assistance is available to all of the beneficiaries, including relevant information concerning their detention and applicable legal process.
- e) Take immediate action to substantially reduce overcrowding within Carmichael Road Detention Center.
- f) Investigate the facts that gave rise to the adoption of these precautionary measures in order to avoid their repetition.
- g) Ensure that civil society organizations and relevant international organizations have access to the Carmichael Road Detention Center for the purpose of monitoring detention conditions.

22. The Commission also requests that the Government of The Bahamas provide information within a time limit of 15 days from the date that the present resolution is issued, on the adoption of precautionary measures and provide updated information periodically.

23. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration of the Rights and Duties of Man or any other applicable instrument.

24. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the Commonwealth of The Bahamas and to the applicants.

25. Approved on February 13, 2015, by: Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe Gonzalez, Second Vice-President; Commissioners José de Jesús Orozco, Rosa Maria Ortiz, James Cavallaro and Paulo Vannuchi.



Elizabeth Abi-Mershed
Assistant Executive Secretary